

J. BARRY VAN HOOGEN

IBLA 82-853

Decided June 29, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 6077 through I MC 6082.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

2. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of pertinent statutes and regulations duly promulgated thereunder.

APPEARANCES: J. Barry Van Hoogen, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

J. Barry Van Hoogen appeals the April 26, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Hoogen Nos. 1 through 6 lode mining claims, I MC 6077 through I MC 6082, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM by December 30, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located in August 1978, and recorded with BLM August 28, 1978, as required by FLPMA. The record does not show any proof of labor or notice of intention to hold the claims as being filed in calendar year 1979, or in any year thereafter.

Appellant states he has an affidavit of assessment work dated October 26, 1979, but he did not suggest that he had filed it with BLM. He alleges that he has been hindered from the performance of further assessment work by threats of bodily harm by unnamed persons.

Section 314 of FLPMA provides, in pertinent part:

Sec. 314. (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act [October 21, 1976] shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, or a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph [1] of this subsection, including a description of the location of the mining claim sufficient to locate the claimed land on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner. * * *

[1] Thus, the owner of unpatented mining claims located in 1978 must file either a proof of labor or a notice of intention to hold the claims both in the county recorder's office where the location notice is of record, and in the proper office of BLM, prior to December 31, 1979. As neither proof of labor nor a notice of intention to hold the claims was filed, the statutory consequences of conclusive presumption of abandonment attached by operation of law without any action or decision by any administrative official. Nicholaus P. Newby, 60 IBLA 264 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). In enacting FLPMA, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, supra.

[2] All persons who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereunder. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

